

### **REMARKS**

In response to the Examiner's Final Action dated December 27, 2010, Applicant is submitting a Declaration under Rule 132 of Mr. Eric P. Koehler, PhD., who has reviewed the present application and the Humpish and Humpish et al. prior art the Examiner is citing. Applicant has also proposed a clarifying amendment (clarifying "rotational movement" to "rotational speed of movement", and clarifying "qualify a calculation" to "qualify the accuracy of a calculation").

Referring to the Declaration, Dr. Koehler notes (paragraph 10) that based on his evaluation "Humpish and Humpish et al. do not teach, suggest, or imply that slump or other rheological properties of the concrete can be computed from measurements of the rotational speed of movement of the mixing drum and the hydraulic pressure required to turn the mixing drum over a period of time, nor do they teach adjusting slump or other rheological properties based on these measurements through the addition of water or chemical admixture".

As noted by Dr. Koehler (paragraph 11), the Humpish references are directed to determining slump from "measurement of work and/or concrete weight (claim 1 and 2 of Humpish; 2:14-23 and 2:30-3:2 of Humpish et al.)". Dr. Koehler reviews the definition of work and particularly observes that the present applicants Cooley et al. "found that knowledge of weight of the concrete was not necessary to determining slump when both hydraulic pressure and rotational speed over a period of time were considered". Dr. Koehler notes that while Humpish monitors speed, speed is used by Humpish to calculate work separately from torque, or to perform functions unrelated to determining slump.

The present claims recite that "rotational speed of movement of and hydraulic pressure applied to the mixing drum over a period of time is used in calculating the rheological parameter of the material." Thus, the claim recites specifically the combination of rotational speed and pressure for slump calculation, the combination that Cooley discovered useful and which is clearly different from the Humpish approach.

In view of the distinctions from the prior art as elaborated in the attached declaration, Applicant believes the pending application is in condition for allowance, and submits that the clarifying amendment places the claims in better form for allowance, and earnestly requests reconsideration and allowance of the claims.

A one month extension of time fee will be included in the EFS-WEB transmittal of this amendment and response. Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 23-3000, under Order No. RSSO-02US from which the undersigned is authorized to draw.

Dated: April 27, 2011

Respectfully submitted,

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